

Regular Session, 2009

SENATE BILL NO. 257

BY SENATOR QUINN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

HOUSING. Provides for safe homes for Louisiana families.(8/15/09)

AN ACT

To enact Chapter 5 of Code Title V of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:2800.81 through 2800.88, relative to construction materials; to provide for damages; to provide for toxic materials; to provide for medical monitoring; to provide for legislative findings; to provide for definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 5 of Code Title V of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:2800.81 through 2800.88, is hereby enacted to read as follows:

CHAPTER 5. SAFE HOMES FOR LOUISIANA FAMILIES

§2800.81. Title

This Chapter shall be known and may be cited as the "Safe Homes for Louisiana Families Act."

§2800.82. Legislative findings

The legislature finds that:

(1) Hurricanes Katrina, Rita, Gustav and Ike destroyed thousands of

1 residential housing units in Louisiana, left thousands of residential housing
2 units substantially damaged and displaced hundreds of thousands of Louisiana
3 citizens.

4 (2) The unprecedented need for rebuilding and new construction in the
5 residential housing market gave unscrupulous manufacturers and suppliers an
6 opportunity to dump substandard construction materials on a population
7 desperate to return to their homes.

8 (3) Some of the substandard construction materials used in the post-
9 hurricane rebuilding have been discovered to be hazardous to the health of
10 families occupying those homes and destructive to the house and its contents,
11 including electrical wiring and electronic devices and appliances corroded and
12 destroyed due to off-gassing of caustic substances from these substandard
13 materials.

14 (4) Families who have unknowingly had these substandard construction
15 materials incorporated into their homes face further financial devastation from
16 these products that make their homes unfit for human occupancy.

17 (5) Louisiana families need safe homes in which to live, and when their
18 health, safety and well-being, as well as the value of their property, are
19 threatened by these substandard construction materials, those families should
20 be made whole from their loss.

21 (6) The financial burden placed on homeowners as a result of these
22 substandard products undermines the rebuilding of Louisiana communities.
23 Louisiana's economic recovery depends on foreign manufacturers and the
24 distributors and sellers of their products being held accountable for the damage
25 they have caused to Louisiana families.

26 §2800.83. Definitions

27 For the purposes of this Chapter, the following words and phrases shall
28 have the following meanings:

29 (1) "Substandard construction materials" means wallboard, originating

1 in China and incorporated into a residential dwelling, that contains chemicals,
2 compounds, materials or other substances which are toxic.

3 (2) "Damages" means all direct and indirect losses, including but not
4 limited to the costs of the original substandard construction materials,
5 inspection, remediation, demolition, replacement construction materials, labor
6 and materials necessary to restore the property, alternative living expenses
7 incurred during the period of demolition, restoration and repair and all other
8 damages available under Civil Code Article 2315.

9 (3) "Seller" means a person who has sold more than ten thousand dollars
10 worth of substandard construction materials.

11 §2800.84. Damages

12 The manufacturer, seller and distributor of substandard construction
13 materials shall be liable to the owner or occupant of a residential dwelling who
14 has suffered damage as a result of the substandard construction materials.

15 §2800.85. Foreign corporations not authorized; solidary liability

16 Any party liable to the owner or occupant of a residential housing unit
17 for damages under this Chapter shall be liable in solido for any such damages
18 with any foreign corporation not authorized to do business in Louisiana in
19 accordance with R.S. 12:301 who is a manufacturer, seller or distributor of the
20 construction materials.

21 §2800.86. Toxic materials, substandard per se

22 Any construction materials incorporated into a residential dwelling that
23 are toxic or that emit toxic gases, fumes or vapors shall be considered
24 substandard per se within the meaning of this Chapter.

25 §2800.87. Medical monitoring

26 In addition to any cause of action allowed under this Chapter or under
27 any other provision of law, the owner or occupant of any residential housing
28 unit who has experienced loss or damage as a result of the incorporation into his
29 dwelling of construction materials that are toxic or that emit toxic gases, fumes

1 or vapors shall also have a cause of action for the cost of future medical
2 treatment, services, surveillance, or procedures related to monitoring of the
3 effects of exposure to the toxic construction materials or any toxic gases, fumes
4 or vapors given off by the construction materials, if it can be shown that there
5 is a risk of disease or injury as a result of such exposure.

6 **§2800.88. Recovery of damages and attorney fees**

7 When the residential dwelling contains substandard construction
8 materials, in addition to general and special damages, reasonable attorney fees
9 may be awarded.

10 Section 2. The provisions of this Act shall be given retroactive application.

11 Section 3. This Act shall become effective on August 15, 2009; if vetoed by the
12 governor and subsequently approved by the legislature, this Act shall become effective on
13 August 15, 2009, or on the day following such approval by the legislature, whichever is
14 later.

The original instrument was prepared by Greg Waddell. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jerry G. Jones.

DIGEST

Proposed law provides for legislative findings.

Proposed law defines "substandard construction materials" as wallboard, originating in China and incorporated into a residential dwelling, that contains chemicals, compounds, materials or other substances which are toxic. Defines "seller" as a person who has sold more than ten thousand dollars worth of substandard construction materials.

Proposed law provides that a manufacturer, seller and distributor of substandard construction materials shall be liable to the owner or occupant of a residential dwelling who has suffered damage as a result of the substandard construction materials.

Proposed law provides that when the residential dwelling contains substandard construction materials, in addition to general and special damages, reasonable attorney fees may be awarded.

Proposed law defines "damages" as all direct and indirect losses, including but not limited to the costs of the original substandard construction materials, inspection, remediation, demolition, replacement construction materials, labor and materials necessary to restore the property, alternative living expenses incurred during the period of demolition, restoration and repair and all other damages available under Civil Code Article 2315.

Proposed law provides that any party liable to the owner or occupant of a residential housing unit for damages under proposed law shall be liable in solido for any such

damages with any foreign corporation not authorized to do business in Louisiana who is a manufacturer, seller or distributor of the construction materials.

Proposed law provides any construction materials incorporated into a residential dwelling that are toxic or that emit toxic gases, fumes or vapors shall be considered substandard per se within the meaning of proposed law.

Proposed law provides that in addition to any cause of action allowed under proposed law or under any other provision of law, the owner or occupant of any residential housing unit who has experienced loss or damage as a result of the incorporation into his dwelling of construction materials that are toxic or that emit toxic gases, fumes or vapors shall also have a cause of action for the cost of future medical treatment, services, surveillance, or procedures related to monitoring of the effects of exposure to the toxic construction materials or any toxic gases, fumes or vapors given off by the construction materials, if it can be shown that there is a risk of disease or injury as a result of such exposure.

Proposed law provides that its provisions shall be given retroactive application.

Effective August 15, 2009.

(Adds R.S. 9:2800.81 - 2800.88)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Moved proposed law from Title 40 to Title 9.
2. Revised definition of "substandard construction materials" and added definition of "seller."
3. Substituted reasonable attorney fees for treble damages.
4. Deleted specific references to contractors in proposed law.
5. Changed "hazardous or toxic" to "toxic".
6. Added that provisions shall have retroactive application.